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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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JUL - 8 2005

Federal Communications Commission  
Office of Secretary

In the Matter of

Negotiated Channel Election Arrangements

Second Periodic Review of the  
Commission's Rules and Policies  
Affecting the Conversion to  
Digital Television

MM Docket No. 03-15

RM 9832

To: The Secretary  
Attn: Acting Chief, Media Bureau

**JOINT PETITION FOR RECONSIDERATION**

Apaga Church, Inc. ("Agape"), the licensee of KVTN (TV), Pine Bluff, Arkansas, and KATV, LLC ("KATV"), licensee of KATV (TV), Little Rock, Arkansas, pursuant to Section 1.106 of the Commission's rules, hereby jointly file this petition for reconsideration of the Report and Order released June 8, 2005 in the above-captioned proceeding rejecting the negotiated channel election arrangement ("NCA") between Agape and KATV for use of Channel 7 by KVTN as its post-transition DTV channel. *See* DA 05-1619 (the "*Report and Order*").

As demonstrated below, the stated basis for rejecting the KVTN-KATV NCA is inconsistent with the instructions the FCC provided to broadcasters concerning the NCA process and with the decision reached in the instant order with respect to another NCA. Accordingly, the Staff should reconsider its decision to reject the KVTN-KATV NCA, and, upon such reconsideration, approve it.

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## **I. Background.**

The KVTN-KATV NCA contemplates the use of KATV's NTSC Channel 7 by KVTN as its post-transition DTV channel. Arkansas Educational Television Commission ("AETC"), licensee of KETS, Little Rock, Arkansas, objected to KVTN's use of Channel 7. KETS has two low-band VHF channels – NTSC Channel 2 and DTV Channel 5 – which AETC released in the first round of channel elections. It is therefore eligible to elect a DTV channel in the second round. In its objection, AETC alleged that KVTN's use of Channel 7 would have an adverse impact on its interests because "the public interest requires that the FCC preserve high-band VHF channels like 7 for licensees that have obviously inferior and inadequate DTV allotments."<sup>1</sup> *AETC Objection to Negotiated Channel Exchange Arrangement ("AETC Objection")*, at. 4. In its response to the AETC Objection, Agape and KATV pointed out that at least one other high-band VHF channel – Channel 10 – is available for KETS, that its interests are therefore not adversely affected, that the NCA procedures announced by the FCC did not require AETC's prior consent to the NCA, and that the public interest would be served by approval of the NCA. *See, Reply to Objection to Negotiated Channel Exchange Arrangement ("KVTN-KATV Reply")*.

## **II. The Staff's Rejection of the KVTN-KATV NCA is Inconsistent With the FCC's Published Instructions Governing the NCA Process.**

The Report and Order states that "[b]ecause Agape and KATV failed to obtain AETC's consent to Agape's use of channel 7, the NCA must be rejected." *Report and Order*, ¶ 12. This

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<sup>1</sup> It is worth noting that KETS was initially assigned in-core DTV Channel \*47. In a notice and comment rulemaking, AETC requested and the FCC agreed to substitute Channel \*5, the same channel which AETC now characterizes as "inferior and inadequate," as the KETS DTV channel.

conflicts with the instructions provided by the FCC prior to the first round of elections in its order announcing the channel election process, *Report and Order in Second Periodic Review of the Commission Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18,279 (2004) (“*Second Period Review Order*”) and in its subsequent Public Notice concerning NCA procedures, *Public Notice, DTV Channel Election Issues – Negotiated Channel Arrangements, Establishment of Form 382 Mailbox, Revisions to FCC Form 381 Certifications, and Notification of FCC of Flash Cut Decisions*, (“*NCA Public Notice*”) DA 05-273 (released February 1, 2005). In both documents the procedures established for NCAs clearly contemplated agreements whereby a station’s unused NTSC or DTV channel could be assigned to another licensee and did not indicate a requirement for the prior consent of every station within an undetermined area. As noted in the *KVTN-KATV Reply*, KVTN and KATV were under no obligation to obtain AETC’s consent to the channel arrangement. This requirement applied only where stations proposed to elect a channel not otherwise assigned in the market. *KVTN-KATV Reply* at 3. Indeed, in another case discussed in the *Report and Order*, the staff approved an NCA where a station objected that it was not a party to the NCA and would be adversely affected by the arrangement. *Report and Order*, ¶¶ 3, 8. In short, failure to obtain AETC’s consent is not in itself a valid basis for rejecting the NCA.

### **III. The Public Interest Would Be Best Served by Approval of the KVTN-KATV NCA.**

AETC asserts that its limited resources make it mandatory that it operate digitally on a high band VHF channel. This objective can be achieved without rejecting the KVTN-KATV NCA. Moreover, Agape is a noncommercial religious broadcaster, dependent on viewer support and with serious financial constraints of its own. The cost savings alleged by AETC in it

objection are as applicable to Agape as they are to AETC and indeed were among the primary concerns that motivated it to enter into the NCA with KATV. The result that would best serve the public interest in the Little Rock market would be for *both* KVTN and KETS to operate post-transition on high band VHF channels.

Agape demonstrated in its *Reply* that channel 10 would be available for KETS to elect in the second round and that there is no meaningful difference between the same DTV facilities operating on either Channels 7 or 10. *KVTN-KATV Reply, Attachment A* at 1. A further engineering study attached hereto as Attachment A, indicates that KETS is the *only* station in the market eligible to make its channel election in the second round and that channel 10 is available to satisfy its need for a high band VHF channel. *See Engineering Statement of R. Louis duTreil, Jr.* Therefore, the only result that rejection of the KVTN-KATV NCA will absolutely guarantee is that AETC will have a choice between two high band VHF channels for the DTV operations of KETS, that it can only pick one of those channels, and the other channel will go unused. In fact, based on its past record of channel selection, there is no guarantee that AETC will elect *either* of the channels, and both might end up unused. The public interest would be better served by approval of the KVTN-KATV NCA, thus assuring that at least Channel 7 is occupied by KVTN, whether or not AETC elects Channel 10 for KETS.

#### **IV. Conclusion.**

For the foregoing reasons, Agape and KATV respectfully request that the Bureau reconsider the *Report and Order* with respect to Pine Bluff, Arkansas, and approve the KVTN-KATV NCA discussed therein.

Respectfully submitted,

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KATV, LLC

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July 8, 2005

**ATTACHMENT A**

Engineering Statement of R. Louis duTreil, Jr.

ENGINEERING STATEMENT  
IN SUPPORT OF PETITION FOR RECONSIDERATION  
TELEVISION STATION KVTN(TV)/-DT  
PINE BLUFF, ARKANSAS

This Engineering Statement was prepared on behalf of Agape Church, Inc. licensee of KVTN(TV)/-DT, Pine Bluff, Arkansas, in support of a Petition for Reconsideration of the Report and Order in MM Docket No. 03-15, Released: June 8, 2005. This statement demonstrates that there is only one station eligible to participate in the second round of DTV channel elections in the Little Rock-Pine Bluff market.

A study was conducted of all Round One channel elections to determine if there were any facilities that deferred their election to Round Two in or in the vicinity of the Little Rock-Pine Bluff market. The study was conducted of all station records within 300 kilometers of the Little Rock reference coordinates. Only one station record was found to have deferred its election to Round Two. This station is KETS-TV, Little Rock, Arkansas (Analog Channel 2, DTV Channel 5). No other stations in the Little Rock-Pine Bluff market are eligible for participation in the Round Two channel elections.



Louis Robert du Treil, Jr., P.E.

du Treil, Lundin & Rackley, Inc.  
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July 6, 2005

CERTIFICATE OF SERVICE

I, Marnie K. Sarver, hereby certify that on this 8<sup>th</sup> day of July, 2005, I caused the original and four copies of the foregoing "Joint Petition For Reconsideration" to be hand delivered to the following:

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW, Room TW-B204  
Washington, DC 20554

In addition, I caused a copy of the said document to be served by overnight delivery and by hand as indicated to the following:

\*Steven C. Schaffer, Esq.  
\*Malcolm G. Stevenson, Esq.  
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